

2013 DRAFTING REQUEST

Bill

Received: **3/21/2013** Received By: **phurley**
Wanted: **As time permits** Same as LRB:
For: **Mark Honadel (608) 266-0610** By/Representing:
May Contact: Drafter: **tkuczens**
Subject: **Courts - immunity liability** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email: **Rep.Honadel@legis.wisconsin.gov**
Carbon copy (CC) to: **tracy.kuczenski@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Limits on civil liability for providers of electricity

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	tkuczens 5/1/2013	jdyer 5/3/2013	rschluet 5/3/2013	_____	sbasford 4/15/2013		
/P2	tkuczens 5/14/2013	jdyer 5/14/2013	jmurphy 5/14/2013	_____	srose 5/3/2013		
/P3	tkuczens 5/16/2013	jdyer 5/17/2013	jfrantze 5/17/2013	_____	sbasford 5/14/2013		
/1				_____	sbasford	lparisi	

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				_____	5/17/2013	5/29/2013	

FE Sent For:

*none
needed*

<END>

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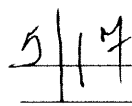
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/P2	tkuczens 5/14/2013	jdyer 5/14/2013	jmurphy 5/14/2013	_____	srose 5/3/2013		
/P3					sbasford 5/14/2013		

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/P2		P3 5/14 jld 5/14	5/14	_____	srose 5/3/2013		

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/P1	tkuczens	P1 jld 4/5	8				

FE Sent For:

<END>

Kuczenski, Tracy

From: Kunkel, Mark
Sent: Friday, March 22, 2013 10:30 AM
To: Kuczenski, Tracy
Subject: FW: Bill draft request

Peggy tells me that you are doing this request. Can I tell Jason that you are the drafter? I sent him in an email yesterday saying that Peggy will be the drafter, so I don't want him to get confused when he gets a draft from you.

As for the language provided, I only have minor comments. On page 1, lines 7-8, it refers to "generation, transmission, distribution, or selling..." Seems like "sale" would be more consistent with the rest of the sentence than "selling." On page 2, line 3, it capitalizes "Rural Utilities Service," which we would lowercase. Pretty minor stuff, right?

--Mark

From: Kunkel, Mark
Sent: Thursday, March 21, 2013 4:08 PM
To: Hurley, Peggy
Subject: FW: Bill draft request

Here is the attachment, which I don't think got sent with my previous email. I'll look at the public utility language tomorrow.

From: Vick, Jason
Sent: Thursday, March 21, 2013 12:15 PM
To: Kunkel, Mark
Subject: Bill draft request

Mark,

Rep. Honadel requests the following attachment be drafted as an LRB draft.

PSC's in-house drafting attorney John Lorence compiled the original preliminary draft and we have made some revisions since then.



Electric Service
draft.docx

Jason Vick

Office of Rep. Mark Honadel
21st Assembly District
608-266-0611

Kuczenski, Tracy

From: Hurley, Peggy
Sent: Friday, March 22, 2013 9:52 AM
To: Vick, Jason
Cc: Kuczenski, Tracy (Tracy.Kuczenski@legis.wisconsin.gov)
Subject: RE: Bill draft request

Hi Jason,

Tracy Kuczenski will be drafting this for you. I will forward the information to her.

Peggy

From: Vick, Jason
Sent: Thursday, March 21, 2013 4:15 PM
To: Hurley, Peggy
Subject: FW: Bill draft request

Peggy,

Here is the attachment. Please let me know if you have any questions.

Jason Vick

Office of Rep. Mark Honadel
21st Assembly District
608-266-0611

From: Vick, Jason
Sent: Thursday, March 21, 2013 12:15 PM
To: Kunkel, Mark
Subject: Bill draft request

Mark,

Rep. Honadel requests the following attachment be drafted as an LRB draft.

PSC's in-house drafting attorney John Lorence compiled the original preliminary draft and we have made some revisions since then.

<< File: Electric Service draft.docx >>

Jason Vick

Office of Rep. Mark Honadel
21st Assembly District
608-266-0611

1 Electric Service draft; also revises tampering legislation from last session.

2 Revised March 20, 2013

*civil liability for the death or injury to
dam or individual or the damage to property
caused by*

4 SECTION 1. 895.63 of the statutes is created to read:

5 **895.63 Civil liability exemption; electric service operations.** (1) Definition. In the section,
6 "electric service provider" means any of the following:

7 (a) A public utility, as defined in sec. 196.01 (5) (a), stats., involved in the generation,
8 transmission, distribution, or ^{or sale} selling of electric energy.

9 (b) An electric cooperative organized under ch. 185 for the purpose of generating, transmitting,
10 distributing or selling electric energy to its members.

specifying wholesale or retail?

11 (2) Except as provided in sub. (3), an electric service provider is immune from civil liability for

12 any damages caused by electric service alleged to be associated with electric facilities owned or

13 operated by an electric service provider if the electric service provider demonstrates to a court all

14 of the following:

15 (a) For an electric service provider under sub. (1) (a), the electric facilities were constructed and
16 operated in compliance with all applicable engineering and safety standards adopted by rule or
17 order by a state regulatory agency.

18 (b) The electric service provider ^{had} has all permits or approvals required by state law necessary to
19 perform the activities alleged to be associated with the damages.

operate as an e.s.p.

define electric service?

1 ²(c) For an electric service provider under sub. (1) (b), the electric facilities were constructed and
2 operated in compliance with all applicable engineering and safety standards adopted by rule by
3 the ~~Rural Utilities Service~~, as defined in s. 196.485 (1) (f), or comparable engineering and safety
4 standards adopted by the cooperative's board of directors.

5 (3) Subsection (2) does not apply to damages caused as a result of reckless, wanton, willful, or
6 intentional misconduct.

7
8 SECTION 2. 941.40 (4) (b) of the statutes is amended to read
9 **941.40 (4)** (b) Subsections (2) and (3) do not apply to a person who acts with the permission of
10 the telegraph, telecommunications, electric light, or electric power company, including a
11 cooperative association organized under ch. 185, that ~~is affected or that~~ owns the wire, pole,
12 cable, conductor, ground, equipment, facility, or other affected property ~~or with the permission~~
13 ~~of the person who owns the property on which the wire, pole, cable, conductor, ground,~~
14 ~~equipment, facility, or other affected property is located.~~

15
16 SECTION 3. Initial applicability. (1) The treatment of section 895.63 of the statutes first
17 applies to actions brought on the effective date of this subsection.

18 (2) The treatment of section 941.40 (4) (b) of the statutes first applies to acts done on the
19 effective date of this subsection.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1956/P1

TKK: A...

JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 4/11/13 wanted 4/17

✓

Gen

1 AN ACT ...; relating to: exemption from civil liability for electric service
2 providers. ✓

Analysis by the Legislative Reference Bureau

✓
This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 895.63 of the statutes is created to read:

4 **895.63 Civil liability exemption; electric service operations.** ✓ (1) In this
5 section: ✓

6 (a) "Electric service provider" means any of the following: ✓

7 1. A public utility, as defined in s. 196.01 (5) (a), ✓ involved in the generation,
8 transmission, distribution, or sale of electric energy. ✓

9 2. A cooperative association organized under ch. 185 ✓ for the purpose of
10 generating, transmitting, distributing, or selling electric energy. ✓

(b) "Rural utilities service" has the meaning given in s. 196.485 (1) (f). ✓

(2) Except as provided in sub. (3), ✓ an electric service provider is not liable in a civil action for any damages related to the death of or injury to an individual or the damage to property caused by the generation, transmission, distribution, or sale ✓ of electric energy by an electric service provider if the electric service provider proves by clear and convincing evidence all of the following: ✓

****NOTE: The language proposed in the drafting instructions ("damages caused by electric service") seems to be ✓ conflating the concept of damage, or injury, with damages, or compensation. A party may receive damages, whether pecuniary or otherwise, if the party suffers a legally cognizant injury or loss, ✓ whether to life, rights or property, as a result of the acts, or omissions, of another. In this section, I make a direct link between the action, or omission, of the electric service provider, the injury suffered by a claimant (damage), and the foreclosure of compensation for that injury (damages). Okay? ✓

****NOTE: The drafting instructions proposed that the injury to the claimant is "caused by electric service alleged to be associated with electric facilities..." The use of the word "alleged" might lead a court to determine that an injury that is not merely alleged to be associated with electric facilities but proven to be caused by electric service would not fall under the exemption. I assumed that was not your intent and removed "alleged." Also, it's not so much the electric facilities, but the operation of those facilities — the "generation, transmission, distribution, or sale of electric energy" that occurs within those facilities — that might be linked to a claimant's injury. For that reason I substitute those operational terms for "electric facilities" in this intro. Okay? *

****NOTE: A party to a civil action must generally prove, and not simply demonstrate, evidence to a court. In this section, the electric service provider must prove the required evidence "by clear and convincing evidence." This burden of proof is less onerous ✓ than "beyond a reasonable doubt" but more onerous than "preponderance of the evidence." Let me know if you would like to use a different standard of proof. ✓

(a) For an electric service provider under sub. (1) (a) 1., ✓ the electric facilities owned or operated by the electric service provider were constructed in compliance with all engineering and safety standards adopted by rule or order by a state regulatory agency and applicable to the facilities at the time of construction. ✓

(b) For an electric service provider under sub. (1) (a) 1., ✓ the electric facilities owned or operated by the electric service provider were operated and maintained in compliance with all engineering and safety standards adopted by rule or order by a state regulatory agency and applicable to the facilities. ✓

****NOTE: The drafting instructions do not specify when the electric facilities must be in compliance with applicable engineering and safety standards; that is, the drafting instructions do not require that the electric facilities be in compliance with standards at the time of the alleged injury.✓ As a result, under this paragraph, an electric service provider could be exempt from liability for an electric facility that was out of compliance at the time of the alleged injury, but that has been brought into compliance by the time a claim is brought.✓ Is that your intent?

1 (c) For an electric service provider under sub. (1) (a) 2.,✓ the electric facilities
2 owned or operated by the electric service provider were constructed in compliance
3 with all engineering and safety standards adopted by rule by the✓ rural utilities
4 service, or comparable engineering and safety standards adopted by the board of
5 directors of the electric service provider, and applicable to the facilities at the time
6 of construction.✓

7 (d) For an electric service provider under sub. (1) (a) 2.,✓ the electric facilities
8 owned or operated by the electric service provider were operated and maintained in
9 compliance with all engineering and safety standards by the rural utilities service,
10 or comparable engineering and safety standards adopted by the board of directors
11 of the electric service provider, and applicable to the facilities.✓

12 (e) The electric service provider has all permits or approvals required by state
13 law to generate, transmit, distribute, or sell electric energy in this state.✓

****NOTE: The drafting instructions for this paragraph✓ are written in the present tense and, as a result, do not require the electric service provider to have had all permits and approvals to operate at the time of the alleged injury. Is that your intent?

****NOTE: In this paragraph, consistent with my changes in the introduction to sub. (2), I replace “perform the activities alleged to be associated with the damages” to those operations undertaken by an electric service provider: the generation, transmission, distribution, or sale of electric energy. Also, because the introduction to sub. (2) references death, injury, and damage (the underlying reasons for a claimant to seek damages), I don’t believe it is necessary to include “alleged to be associated with the damages” in this paragraph. Please let me know if this is not clear.✓

****NOTE: Are there any permits or approvals required under federal law, in addition to those required under state law, for an electric service provider to operate in this state?✓

14 (3) This section✓ does not apply if the death or injury or damage to property was
15 caused by reckless, wanton, ^{or} willful acts or omissions or intentional misconduct.

1 [✓]
SECTION 2. 941.40 (4) (b) of the statutes is amended to read:

2 941.40 (4) (b) Subsections (2) and (3) do not apply to a person who acts with the
3 permission of the telegraph, telecommunications, electric light,[✓] or electric power
4 company, including a cooperative association organized under ch. 185,[✓] that is
5 ~~affected or that~~ owns the wire, pole, cable, conductor, ground, equipment, facility, or
6 other affected property ~~or with the permission of the person who owns the property~~
7 ~~on which the wire, pole, cable, conductor, ground, equipment, facility, or other~~
8 ~~affected property is located.~~[✓]

9 History: 1985 a. 187, 297, 332; 2011 a. 155 ss. 3 to 5, 32 to 34; Stats. 2011 s. 941.40.

SECTION 3. Initial applicability.

10 (1) The treatment of section 895.63[✓] of the statutes first applies to actions or
11 special proceedings commenced on the effective date of this subsection.[✓]

12 (2) The treatment of section 941.40 (4) (b)[✓] of the statutes first applies to acts
13 done on the effective date of this subsection.[✓]

14 (END)

Kuczenski, Tracy

From: Vick, Jason
Sent: Tuesday, April 23, 2013 3:07 PM
To: Kuczenski, Tracy
Subject: RE: LRB 1956/P1

Tracy,

The following are drafting changes and answers to drafting notes for **LRB 1956/P1 (exemption from civil liability for electric service providers)**:

Page 1, Line 7: Delete "generation"

Page 1, Line 10: Delete "generating"

Page 2, Line 3: Delete "related to the death of or injury to" and Add "animal" so that the line reads "a civil action for any damages to an animal, individual, or the"

Page 2, Line 4: Delete "generation"

Page 2, Lines 7-10: Delete

Page 3, Lines 1-6: Delete

Page 3, Line 13: Delete "generate"

Page 3, Line 14: Delete "death or injury" and Add "animal, individual, or" so that the line reads "This section does not apply if the damage to an animal, individual, or property was"

Responses to drafter notes:

Note 1 – okay

Note 2 – okay

Note 3 – Agree with "clear and convincing evidence" standard

Notes 4 & 5 – Yes, present tense

Note 6 – okay

Note 7 – No federal laws need to be included

Please let me know if you have any questions.

Thanks,

Jason Vick

Office of Rep. Mark Honadel

21st Assembly District

608-266-0611



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1956/P1 P2
TKK:jld:rs

RMNR
increA

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

5/1/13

500M

Regen

X

- 1 AN ACT *to amend* 941.40 (4) (b); and *to create* 895.63 of the statutes; relating
- 2 to: exemption from civil liability for electric service providers.

Insert
analysis ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✓

- 3 SECTION 1. 895.63 of the statutes is created to read:
- 4 **895.63 Civil liability exemption; electric service operations.** (1) In this
- 5 section:

- 6 (a) "Electric service provider" means any of the following:

- 7 (1) 1. A public utility, as defined in s. 196.01 (5) (a), involved in the generation,
- 8 transmission, distribution, or sale of electric energy.

- 9 2. A cooperative association organized under ch. 185 for the purpose of
- 10 generating, transmitting, distributing, or selling electric energy. ✓

(b) "Rural utilities service" has the meaning given in s. 196.485 (1) (f).

(2) Except as provided in sub. (3), an electric service provider is not liable in

a civil action for any ^{damage} damages related to the death of or injury to an ^{animal, an} individual ^{or} (the

² damage to property caused by the ² generation, transmission, distribution, or sale of

electric energy by an electric service provider if the electric service provider proves

by clear and convincing evidence all of the following: ✓

le
****NOTE: The language proposed in the drafting instructions ("damages caused by electric service") seems to be conflating the concept of damage, or injury, with damages, or compensation. A party may receive damages, whether pecuniary or otherwise, if the party suffers a legally cognizant injury or loss, whether to life, rights or property, as a result of the acts, or omissions, of another. In this section, I make a direct link between the action, or omission, of the electric service provider, the injury suffered by a claimant (damage), and the foreclosure of compensation for that injury (damages). Okay?

****NOTE: The drafting instructions proposed that the injury to the claimant is "caused by electric service alleged to be associated with electric facilities..." The use of the word "alleged" might lead a court to determine that an injury that is not merely alleged to be associated with electric facilities but proven to be caused by electric service would not fall under the exemption. I assumed that was not your intent and removed "alleged." Also, it's not so much the electric facilities, but the operation of those facilities — the "generation, transmission, distribution, or sale of electric energy" that occurs within those facilities — that might be linked to a claimant's injury. For that reason I substitute those operational terms for "electric facilities" in this introduction. Okay?

****NOTE: A party to a civil action must generally prove, and not simply demonstrate, evidence to a court. In this section, the electric service provider must prove the required evidence "by clear and convincing evidence." This burden of proof is less onerous than "beyond a reasonable doubt" but more onerous than "preponderance of the evidence." Let me know if you would like to use a different standard of proof.

(a) For an electric service provider under sub. (1) (a) 1., the electric facilities owned or operated by the electric service provider were constructed in compliance with all engineering and safety standards adopted by rule or order by a state regulatory agency and applicable to the facilities at the time of construction.

11 A (a) ~~le~~ (b) For an electric service provider under sub. (1) (a) 1., the electric facilities
12 owned or operated by the electric service provider ^{are} ~~were~~ operated and maintained in
13 compliance with all engineering and safety standards adopted by rule or order by a
14 state regulatory agency and applicable to the facilities. ✓

****NOTE: The drafting instructions do not specify when the electric facilities must be in compliance with applicable engineering and safety standards; that is, the drafting instructions do not require that the electric facilities be in compliance with standards at the time of the alleged injury. As a result, under this paragraph, an electric service provider could be exempt from liability for an electric facility that was out of compliance at the time of the alleged injury, but that has been brought into compliance by the time a claim is brought. Is that your intent?

- 1 (c) For an electric service provider under sub. (1) (a) 2., the electric facilities
2 owned or operated by the electric service provider were constructed in compliance
3 with all engineering and safety standards adopted by rule by the rural utilities
4 service, or comparable engineering and safety standards adopted by the board of
5 directors of the electric service provider, and applicable to the facilities at the time
6 of construction.

- 7 ~~(b)~~ ^(d) For an electric service provider under sub. (1) (a) 2., the electric facilities
8 owned or operated by the electric service provider ~~were~~ ^{are} operated and maintained in
9 compliance with all engineering and safety standards by the rural utilities service,
10 or comparable engineering and safety standards adopted by the board of directors
11 of the electric service provider, and applicable to the facilities. ✓

- 12 ~~(c)~~ ^(e) The electric service provider has all permits or approvals required by state
13 law to generate, transmit, distribute, or sell electric energy in this state. ✓

****NOTE: The drafting instructions for this paragraph are written in the present tense and, as a result, do not require the electric service provider to have had all permits and approvals to operate at the time of the alleged injury. Is that your intent?

****NOTE: In this paragraph, consistent with my changes in the introduction to sub. (2), I replace "perform the activities alleged to be associated with the damages" to those operations undertaken by an electric service provider: the generation, transmission, distribution, or sale of electric energy. Also, because the introduction to sub. (2) references death, injury, and damage (the underlying reasons for a claimant to seek damages), I don't believe it is necessary to include "alleged to be associated with the damages" in this paragraph. Please let me know if this is not clear.

****NOTE: Are there any permits or approvals required under federal law, in addition to those required under state law, for an electric service provider to operate in this state?

- 14 (3) This section does not apply if the death or injury or damage to property was
15 caused by reckless, wanton, or willful acts or omissions or intentional misconduct. ✓

✓ an animal, an individual,
or

1 **SECTION 2.** 941.40 (4) (b) of the statutes is amended to read:

2 941.40 (4) (b) Subsections (2) and (3) do not apply to a person who acts with the
3 permission of the telegraph, telecommunications, electric light, or electric power
4 company, including a cooperative association organized under ch. 185, that is
5 ~~affected or that owns the wire, pole, cable, conductor, ground, equipment, facility, or~~
6 ~~other affected property or with the permission of the person who owns the property~~
7 ~~on which the wire, pole, cable, conductor, ground, equipment, facility, or other~~
8 ~~affected property is located.~~

9 **SECTION 3. Initial applicability.**

10 (1) The treatment of section 895.63 of the statutes first applies to actions or
11 special proceedings commenced on the effective date of this subsection.

12 (2) The treatment of section 941.40 (4) (b) of the statutes first applies to acts
13 done on the effective date of this subsection.

14 (END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1956/P1ins
TKK:jld:rs

INSERT ANALYSIS

* This bill provides an exemption from civil liability to an electric service provider (provider)✓ for damage to an animal, an individual, or property caused by the transmission, distribution, or sale of electric energy by that provider.✓ The bill defines "electric service provider" to mean: 1) a public utility involved in the transmission, distribution, or sale of electric energy; and 2) a cooperative association organized for the purpose of transmitting, distributing, or selling electric energy.✓ To attain the exemption, the provider must prove by clear and convincing evidence that the electric facilities owned by the provider are operated and maintained in compliance with all applicable engineering and safety standards and that the provider has all permits or approvals required to transmit, distribute, or sell electric energy in Wisconsin.✓ Under the bill, a provider may not avoid liability for damage to an animal, an individual, or property, if the damage is caused by reckless, wanton, or willful acts or omissions or intentional misconduct.✓

check
Δ

(end insert)

Kuczenski, Tracy

From: Vick, Jason
Sent: Monday, May 13, 2013 9:26 AM
To: Kuczenski, Tracy
Cc: Gustafson, Andrew
Subject: Drafting changes to 1956/P2

Tracy,

The following are requested changes to LRB 1956/P2:

Page 2, Line 14: Insert language so that the line reads: "(a) For an electric service provider under sub. (1)(a) 1., the electric facilities **that are**

Page 2, Line 15: Insert language so that the line reads: "owned or operated by the electric service provider **and are providing service to the location of alleged damage** and operated and maintained in"

Page 2, Line 18: Insert language so that the line reads: "(b) For an electric service provider under sub. (1)(a) 2., the electric facilities **that are**

Page 2, Line 19: Insert language so that the line reads: "owned or operated by the electric service provider **and are providing service to the location of alleged damage** and operated and maintained in"

Page 2, Line 20: Insert language so that the line reads: "compliance with all engineering and safety standards **adopted by the Rural Utilities Service,**"

Page 2, Lines 23-24: **Delete**

Thank you!

Jason Vick
Office of Rep. Mark Honadel
21st Assembly District
608-266-0611



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-195642 P3

TKK:jld:rs

RMMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

5/14/13

soon

Puff
5/14
jm

✓

Regen

- 1 AN ACT *to amend* 941.40 (4) (b); and *to create* 895.63 of the statutes; **relating**
2 **to:** exemption from civil liability for electric service providers. ✓

Analysis by the Legislative Reference Bureau

✓
and providing service to the location of the alleged damage

This bill provides an exemption from civil liability to an electric service provider (provider) for damage to an animal, an individual, or property caused by the transmission, distribution, or sale of electric energy by that provider. The bill defines "electric service provider" to mean: 1) a public utility involved in the transmission, distribution, or sale of electric energy; and 2) a cooperative association organized for the purpose of transmitting, distributing, or selling electric energy. To attain the exemption, the provider must prove by clear and convincing evidence that the electric facilities owned by the provider are operated and maintained in compliance with all applicable engineering and safety standards and that the provider has all permits or approvals required to transmit, distribute, or sell electric energy in Wisconsin. Under the bill, a provider may not avoid liability for damage to an animal, an individual, or property if the damage is caused by reckless, wanton, or willful acts or omissions or intentional misconduct.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 3 SECTION 1. 895.63 of the statutes is created to read:

1 **895.63 Civil liability exemption; electric service operations.** (1) In this
2 section:

3 (a) "Electric service provider" means any of the following:

4 1. A public utility, as defined in s. 196.01 (5) (a), involved in the transmission,
5 distribution, or sale of electric energy.

6 2. A cooperative association organized under ch. 185 for the purpose of
7 transmitting, distributing, or selling electric energy.

8 (b) "Rural utilities service" has the meaning given in s. 196.485 (1) (f).

9 (2) Except as provided in sub. (3), an electric service provider is not liable in
10 a civil action for any damage to an animal, an individual, or property caused by the
11 transmission, distribution, or sale of electric energy by an electric service provider
12 if the electric service provider proves by clear and convincing evidence all of the
13 following:

14 (a) For an electric service provider under sub. (1) (a) 1., the electric facilities
15 owned or operated by the electric service provider ^{and providing service to the location of alleged damage} are operated and maintained in
16 compliance with all engineering and safety standards adopted by rule or order by a
17 state regulatory agency and applicable to the facilities.

18 (b) For an electric service provider under sub. (1) (a) 2., the electric facilities
19 owned or operated by the electric service provider ^{and providing service to the location of alleged damage} are operated and maintained in
20 compliance with all engineering and safety standards by the rural utilities service,
21 or comparable engineering and safety standards adopted by the board of directors
22 of the electric service provider, and applicable to the facilities.

23 (c) The electric service provider has all permits or approvals required by state
24 law to transmit, distribute, or sell electric energy in this state.

(3) This section does not apply if the damage to an animal, an individual, or property was caused by reckless, wanton, or willful acts or omissions or intentional misconduct.

SECTION 2. 941.40 (4) (b) of the statutes is amended to read:

941.40 (4) (b) Subsections (2) and (3) do not apply to a person who acts with the permission of the telegraph, telecommunications, electric light, or electric power company, including a cooperative association organized under ch. 185, that is affected or that owns the wire, pole, cable, conductor, ground, equipment, facility, or other affected property or with the permission of the person who owns the property on which the wire, pole, cable, conductor, ground, equipment, facility, or other affected property is located.

SECTION 3. Initial applicability.

(1) The treatment of section 895.63 of the statutes first applies to actions or special proceedings commenced on the effective date of this subsection.

(2) The treatment of section 941.40 (4) (b) of the statutes first applies to acts done on the effective date of this subsection.

(END)

Kuczenski, Tracy

From: Vick, Jason
Sent: Thursday, May 16, 2013 4:02 PM
To: Kuczenski, Tracy
Cc: Gustafson, Andrew
Subject: LRB 1956/P3 (Exemption from civil liability for electric service providers)

Tracy,

All looks good with LRB 1956/P3. Could you please convert it to a draft that can be introduced?

Thanks,

Jason Vick

Office of Rep. Mark Honadel
21st Assembly District
608-266-0611



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1956/PS /

TKK:jld:jm

RMMR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

2013 BILL

No changes

waited 5/17/13

5/16/13

Regen

AN ACT *to amend* 941.40 (4) (b); and *to create* 895.63 of the statutes; relating
to: exemption from civil liability for electric service providers.

Analysis by the Legislative Reference Bureau

This bill provides an exemption from civil liability to an electric service provider (provider) for damage to an animal, an individual, or property caused by the transmission, distribution, or sale of electric energy by that provider. The bill defines "electric service provider" to mean: 1) a public utility involved in the transmission, distribution, or sale of electric energy; and 2) a cooperative association organized for the purpose of transmitting, distributing, or selling electric energy. To attain the exemption, the provider must prove by clear and convincing evidence that the electric facilities owned by the provider and providing service to the location of the alleged damage are operated and maintained in compliance with all applicable engineering and safety standards. Under the bill, a provider may not avoid liability for damage to an animal, an individual, or property if the damage is caused by reckless, wanton, or willful acts or omissions or intentional misconduct.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 895.63 of the statutes is created to read:

895.63 Civil liability exemption; electric service operations. (1) In this section:

1 (a) “Electric service provider” means any of the following:

2 1. A public utility, as defined in s. 196.01 (5) (a), involved in the transmission,
3 distribution, or sale of electric energy.

4 2. A cooperative association organized under ch. 185 for the purpose of
5 transmitting, distributing, or selling electric energy.

6 (b) “Rural utilities service” has the meaning given in s. 196.485 (1) (f).

7 (2) Except as provided in sub. (3), an electric service provider is not liable in
8 a civil action for any damage to an animal, an individual, or property caused by the
9 transmission, distribution, or sale of electric energy by an electric service provider
10 if the electric service provider proves by clear and convincing evidence all of the
11 following:

12 (a) For an electric service provider under sub. (1) (a) 1., the electric facilities
13 owned or operated by the electric service provider and providing service to the
14 location of alleged damage are operated and maintained in compliance with all
15 engineering and safety standards adopted by rule or order by a state regulatory
16 agency and applicable to the facilities.

17 (b) For an electric service provider under sub. (1) (a) 2., the electric facilities
18 owned or operated by the electric service provider and providing service to the
19 location of alleged damage are operated and maintained in compliance with all
20 engineering and safety standards by the rural utilities service, or comparable
21 engineering and safety standards adopted by the board of directors of the electric
22 service provider, and applicable to the facilities.

23 (3) This section does not apply if the damage to an animal, an individual, or
24 property was caused by reckless, wanton, or willful acts or omissions or intentional
25 misconduct.

SECTION 2. 941.40 (4) (b) of the statutes is amended to read:

941.40 (4) (b) Subsections (2) and (3) do not apply to a person who acts with the permission of the telegraph, telecommunications, electric light, or electric power company, including a cooperative association organized under ch. 185, that is affected or that owns the wire, pole, cable, conductor, ground, equipment, facility, or other affected property or with the permission of the person who owns the property on which the wire, pole, cable, conductor, ground, equipment, facility, or other affected property is located.

SECTION 3. Initial applicability.

(1) The treatment of section 895.63 of the statutes first applies to actions or special proceedings commenced on the effective date of this subsection.

(2) The treatment of section 941.40 (4) (b) of the statutes first applies to acts done on the effective date of this subsection.

(END)

Parisi, Lori

From: Vick, Jason
Sent: Wednesday, May 29, 2013 9:58 AM
To: LRB.Legal
Subject: Draft Review: LRB -1956/1 Topic: Limits on civil liability for providers of electricity

Please Jacket LRB -1956/1 for the ASSEMBLY.